

H & W OIL CO., INC.

IBLA 75-209

Decided November 10, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting the high bonus bid for an upland oil and gas lease offered at a competitive lease sale.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 et seq. (1970), and those of the Mineral Lands Leasing Act, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1970), authorize the Secretary of the Interior to reject high bids for upland oil and gas leases based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

2. Oil and Gas Leases: Competitive Leases -- Rules of Practice:
Appeals: Burden of Proof

An oil and gas lease bidder appealing from the rejection of his tender on the basis of inadequacy of the bonus bid must show by substantial evidence either (1) the criteria utilized in establishing the minimum bid value failed to include all relevant considerations, or included factors that were not relevant; or (2) the criteria were incorrectly applied.

APPEARANCES: Robert B. Hoemeke, Esq., Evans, Hoemeke and Casey, St. Louis, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

H & W Oil Company, Inc., (hereinafter cited as H & W) has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated October 7, 1974, rejecting its bonus bid for a 130-acre parcel of land in Franklin County, Illinois, tendered in a competitive lease sale held on September 4, 1974. H & W had submitted a bid of \$5,000 or \$38.4615 per acre. Based on its pre-sale minimum bid evaluation the State Office rejected the bid as inadequate. From that decision H & W has pursued this appeal.

In order to understand the contentions of the appellant, it is necessary to review the history of the subject lands. The subject lands consist of the W 1/2 NE 1/4, W 1/2 SE 1/4 NE 1/4, E 1/2 NW 1/4 SE 1/4, NW 1/4 NW 1/4 SE 1/4 sec. 36, T. 5 S., R. 2 E., 3rd P.M., Franklin County, Illinois, aggregating 130 acres. The lands were originally within the North Benton Chennault Pool. The Army Corps of Engineers acquired fee title to the lands and the oil and gas rights of both the working and royalty interests to a depth of 3,000 feet. This purchase was part of the Corps' development plan for the Rend Lake Project in Illinois. The acquisition was completed in July 1973. Under the terms of the purchase agreement, the well owners were permitted to continue operations until January 1, 1974, or until production from the lands aggregated 15,000 bbls. within calendar year 1973, whichever occurred first. The Corps of Engineers did not, however, acquire title to the wells themselves.

As the termination date specified in the assignment approached, the Corps of Engineers, duly mindful of the energy crisis, determined that continued production for a limited period of time would not be detrimental to the Rend Lake Project. The Corps contacted the Eastern States Office, BLM, to discuss possible procedures for continued production from the subject lands. The Corps was informed that as of January 1, 1974, the oil and gas deposits within the exterior boundaries of the land became the property of the United States in an acquired land status, and would be available for leasing only under the provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 et seq. (1970). Inasmuch as the lands were within the known geologic structure of a producing oil field the lands must be put up for competitive bidding. See 30 U.S.C. §§ 352, 226(b) (1970).

Accordingly, the Eastern States Office announced a lease offering. The bids were opened on September 4, 1974. Appellant H & W submitted the only bid for the subject lands, offering a bonus of \$5,000 at \$38.4615 an acre. By decision of October 7, 1974, H & W was informed that its tender was rejected due to the inadequacy of the bonus bid.

[1] We note at the outset that the Secretary of the Interior, or his authorized delegate, clearly has the authority to reject a high bid on the basis of an inadequate bonus. Section 17 of the Mineral Leasing Act, as amended, provides, in relevant part:

If the lands to be leased are within any known geological structure of a producing oil and gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12 1/2 per centum in amount or value of the production removed or sold from the lease. (Emphasis added.)

30 U.S.C. § 226(b).

Similarly, this Board has upheld the authority of the Secretary or his delegate to reject bids for inadequacy of the bonus offered provided the rejection has a reasonable basis in fact. See John H. Larsen, 12 IBLA 244 (1973); C.S.V. Oil Exploration Co., 10 IBLA 50 (1973); cf. Exxon Company, U.S.A., 15 IBLA 345 (1974).

[2] H & W recognizes the authority of the Secretary to reject offers but feels that in the circumstances of this case its bonus bid was a reasonable bid. It should be noted that the Government's minimum bid was originally computed at \$350 an acre. H & W points to the uncertainties involved in this lease offering. Under the terms of the lease no new drilling will be permitted. Therefore, the successful offeror must negotiate with the well owners in order to obtain any production.

At the time of purchase by the Army Corps of Engineers the oil and gas rights of the working interests were valued at \$106,187.48. Subsequent to the purchase the price of oil nearly tripled for production from stripper wells. Utilizing a figure of \$9.96 a barrel, with an estimated effective lease date of October 1, 1974, the Geological Survey arrived at a figure of \$350 an acre. 1/

1/ A recomputation of minimum bid value conducted on September 24, 1974, with an expected leasing date of December 1, 1974, arrived at a minimum bid of \$320 per acre. This change was in large part due to the continued depletion of oil in the pool resulting from operations being conducted pursuant to an understanding between H & W and the Army Corps of Engineers with all funds being held in escrow.

Appellant argues, in effect, that the Government is in the position of making a windfall profit. It notes that the oil and gas rights of the working interests were obtained under threat of condemnation, with a view to terminating all production as of January 1, 1974. Subsequent to the date of purchase the oil embargo and the concomitant rise in world oil prices (as well as in the price of oil obtained from domestic stripper wells) resulted in a decision by the Government to obtain as full production as was possible from the field. The net effect of this, appellant contends, is that the Government is profiting at the expense of the former owners who were forced to sell their oil and gas rights at a level of roughly \$3.56 per barrel only to see the Government reap the benefits of the sharp increase in oil prices. In contacts with the well owners the appellant has been informed that they desire to be placed in as close a position as they would have been had they not been forced to sell. Appellant therefore anticipates that considerable expenditures will be necessary to obtain the right to use the existing wells. Furthermore, appellant notes that given the increase in the value of the oil, and the fact that the lease provisions provide that the United States will receive one-third of all of the proceeds of the sale of the oil, the United States will receive approximately \$95,000 more than it originally paid for the oil and gas rights, quite apart from any bonus payment it will receive. Additionally, H & W notes that it was the only bidder in the sale which indicates that other prospective offerors did not feel that the lease offer merited any bids.

An oil and gas lease bidder who appeals from a rejection of its tender based on the inadequacy of the bonus bid must show by substantial evidence either: (1) the criteria utilized in establishing the minimum bid value failed to include all relevant considerations, or included factors which were not relevant; or (2) the criteria were incorrectly applied.

It seems clear that the Geological Survey considered the following factors among others in arriving at minimum bid value: the amount of the recoverable reserves, the necessity that the successful bidder obtain title to the existing wells, necessary revamping of existing facilities, the limited areal extent of the parcel, and the possibility that increased production from remaining wells, owing to a conversion of a producing well to a water injection well, might endanger the "stripper" status of the wells.

The Geological Survey thus considered a wide diversity of factors in determining the minimum bid and appellant's showing does not overcome the reliance which the Secretary normally places on the findings of his technical experts. See Exxon Co., supra at 354.

Appellant does not contend that the Government did not pay fair market value for the rights which it acquired in July of 1973. We know of no principle of law which requires the United States to compensate vendors, whether willing or not, for subsequent appreciation in the value of property after a sales contract therefor has been negotiated and entered into.

Appellant requested opportunity for a hearing or an oral argument to supplement its showing on appeal. As there appears to be no material fact in dispute, a hearing is not warranted. Nor do we see that an oral argument will be productive of additional information relative to the legal issues involved. Accordingly, the requests are denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

